

has been published in the FEDERAL REGISTER, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

**§ 228.21 Assistant Administrator's decision.**

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
  - (2) Findings on the issues of fact with the reasons therefor; and
  - (3) Rulings on issues of law.
- (4) The Assistant Administrator's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

**PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

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FIGURE 1 TO PART 229—DRIFT GILLNET PINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

**Subpart A—General Provisions**

**§ 229.1 Purpose and scope.**

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery

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Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§ 229.4(k) and 229.5(f).

(g) The purposes of the regulations in this part are to:

(1) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and

(2) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9086, Feb. 24, 1999]

### § 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless otherwise defined in this chapter, the terms in this chapter have the following meaning:

*Act* or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

*American lobster or lobster* means *Homarus americanus*.

*Anchored gillnet* means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

*Assistant Administrator* means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

*Authorization Certificate* means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

*Bitter end* means the end of a line that detaches from a weak link.

*Bottom portion of the line* means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

*Breaking strength* means the highest tensile force which an object can withstand before breaking.

*Bridle* means the lines connecting a gillnet to an anchor or buoy line.

*Buoy line* means a line connecting fishing gear in the water to a buoy at the surface of the water.

*Category I fishery* means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

*Category II fishery* means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and

that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "occasional" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

*Category III fishery* means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) Ten percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in

the area or at the discretion of the Assistant Administrator.

*Commercial fishing operation* means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

*Depleted species* means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

*Driftnet, drift gillnet, or drift entanglement gear* means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

*Fisher or fisherman* means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

*Fishery* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Fishing or to fish* means any commercial fishing operation activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

*Fishing trip* means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.

*Fishing vessel or vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

*Float-line* means the rope at the top of a gillnet from which the mesh portion of the net is hung.

*Gillnet* means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term “gillnet” includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

*Groundline*, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

*Incidental* means, with respect to an act, a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

*Injury* means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

*Insignificance threshold* means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the re-

covery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

*Interaction* means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

*Large mesh gillnet* means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

*Lead-line* means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

*List of Fisheries* means the most recent final list of commercial fisheries published in the FEDERAL REGISTER by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

*Mesh size* means the distance between inside knot to inside knot. Mesh size is measured as described in § 648.80(f)(1) of this title.

*Mid-Atlantic coastal waters* means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°30'W, then due south to 33°51'N lat., thence west to the North Carolina/South Carolina border.

*Minimum population estimate* means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

*Negligible impact* has the same meaning as in §216.103 of this chapter.

*Net productivity rate* means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

*Night* means any time between one half hour before sunset and one half hour after sunrise.

*NMFS* means the National Marine Fisheries Service.

*Nonvessel fishery* means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

*Observer* means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

*Operator*, with respect to any vessel, means the master, captain, or other individual in charge of that vessel.

*Potential biological removal level* means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

*Qualified individual* means an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and

Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

*Regional Fishery Management Council* means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

*Reliable report* means a credible right whale sighting report based upon which a DAM zone would be triggered.

*Seine* means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. In some regions, the net is typically constructed with a capture bag in the center of the net which concentrates the fish as the net is closed.

*Serious injury* means any injury that will likely result in mortality.

*Sink gillnet* or *stab net* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

*Sinking line* means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column.

*Small mesh gillnet* means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

*Spotter plane* means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

*Stowed* means traps/pots and gillnets that are unavailable for immediate use and further, all gillnets are stored in accordance with the following:

(1) All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum, and all buoys larger than 6 inches (15.24 cm) in diameter,

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high flyers, and anchors are disconnected; and

(2) Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

*Strategic stock* means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

*Sunrise* means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Sunset* means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Take Reduction Plan* means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Take Reduction Team* means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Tended gear or tend* means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

*Tie-down* refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

*Tie loops* means the loops on a gillnet panel used to connect net panels to the buoy line, groundline, bridle or each other.

*Trap/Pot* means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching species including but not limited to lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

*Trap/pot trawl* means two or more trap/pots attached to a single groundline.

*Up and down line* means the line that connects the float-line and lead-line at the end of each gillnet net panel.

*U.S. waters* means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

*Vessel owner or operator* means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

*Vessel of the United States* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Weak link* means a breakable component of gear that will part when subject to a certain tension load.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39183, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7551, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1141, Jan. 9, 2002; 67 FR 1313, Jan. 10, 2002; 69 FR 6584, Feb. 11, 2004; 69 FR 43345, July 20, 2004; 71 FR 24796, Apr. 26, 2006; 72 FR 34642, June 25, 2007; 72 FR 57180, Oct. 5, 2007; 73 FR 51241, Oct. 2, 2008; 75 FR 7396, Feb. 19, 2010]

### § 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited

to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to fish with or possess trap/pot gear in the areas and during the times specified in § 229.32 (c)(2) through (c)(9) unless the trap/pot gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (c)(1) through (c)(9), or unless the gear is stowed as specified in § 229.2.

(i) It is prohibited to fish with or possess anchored gillnet gear in the areas and during the times specified in § 229.32(d)(2) through (d)(7) unless that gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (d)(1) through (d)(7), or unless the gear is stowed as specified in § 229.2.

(j) It is prohibited to fish with or possess drift gillnet gear in the areas and during the times specified in § 229.32(e)(1) through (e)(6) unless the drift gillnet gear complies with the marking requirements, closures, modi-

fications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (e)(1) through (e)(6), or unless the gear is stowed as specified in § 229.2.

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3), or for (g)(3) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (i.e. gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iii), (f)(2)(v), (g)(2), and (h)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in § 229.2.

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in § 229.33(a)(1), (a)(3), (a)(6), and (a)(8). This prohibition also applies to areas where pingers are required, unless the vessel owner or operator complies with the pinger provisions specified in § 229.33 (a)(2) through (a)(5) and (a)(7). This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove gillnet gear from the areas and for the times as specified in § 229.34 (b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in

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§ 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii) of § 229.34.

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under § 229.33 (a)(2) through (a)(5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

(q)—(r) [Reserved]

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39184, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7552, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1313, Jan. 10, 2002; 67 FR 59477, Sept. 23, 2002; 71 FR 24796, Apr. 26, 2006; 72 FR 57180, Oct. 5, 2007; 74 FR 23357, May 19, 2009; 75 FR 7396, Feb. 19, 2010]

### § 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing

vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate. To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.



(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) *Address.* Unless the granting and administration of authorizations under this part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907-586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206-526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 562-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§229.6 and 229.7

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) *Authorization Certificate and decal requirements.* (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any

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state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(f) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(g) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(h) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(i) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(j) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

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(k) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(l) *Expiration.* Authorization Certificates expire at the end of each calendar year.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 46, Jan. 2, 1997; 64 FR 9086, Feb. 24, 1999]

### § 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(d).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in commercial fishing operations must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

**§ 229.6 Reporting requirements.**

(a) Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

- (1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;
- (2) The name and address of the vessel owner or operator;
- (3) The name and description of the fishery, including gear type and target species; and
- (4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (a)(4) of this section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

**§ 229.7 Monitoring of incidental mortalities and serious injuries.**

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

- (1) Obtain statistically reliable estimates of incidental mortality and serious injury;

- (2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

- (3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

- (1) Record incidental mortality and injury, and bycatch of other nontarget species;
- (2) Record numbers of marine mammals sighted; and
- (3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for participants in Category I and II fisheries.* (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:

- (i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are

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approved in advance by the Regional Administrator;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

(vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(viii) Not impairing or in any way interfering with the research or observations being carried out; and

(ix) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or re-

leased by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) *Observer requirements for participants in Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of § 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

### § 229.8 Publication of List of Fisheries.

(a) The Assistant Administrator will publish in the FEDERAL REGISTER a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that have been incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment.

(d) The revised final List of Fisheries will become effective no sooner than 30 days after publication in the FEDERAL REGISTER.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

#### § 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to

the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the FEDERAL REGISTER and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the FEDERAL REGISTER at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

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### § 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the vessel shall be subject to a penalty of not more than \$100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in ac-

cordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

### § 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216-100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

#### § 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

### Subpart B—Takes of Endangered and Threatened Marine Mammals

#### § 229.20 Issuance of permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such spe-

cies or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the FEDERAL REGISTER of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the FEDERAL REGISTER a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notification and opportunity for public comment, the list of fisheries published in accordance with paragraph (b) of this section whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters.* This subpart does not apply to the taking of Southern (California) sea otters.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

### Subpart C—Take Reduction Plan Regulations and Emergency Regulations

#### § 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

[64 FR 9088, Feb. 24, 1999]

#### § 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Pa-

cific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders.* An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers.* (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz ( $\pm 2$  kHz) sound at 132 dB ( $\pm 4$  dB) re 1 micropascal at 1 m, lasting 300 milliseconds ( $\pm 15$  milliseconds), and repeating every 4 seconds ( $\pm .2$  seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through (6) of this section.

(3) *Floatline.* Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline.* Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration.* Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(7) The pingers must be operational and functioning at all times during deployment.



(8) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops.* After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998; 64 FR 3432, Jan. 22, 1999]

#### § 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots.

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part

80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

#### Maine

A line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67' N. lat., 66°57.77' W. long. (R N "2", Quoddy Narrows)  
 44°48.64' N. lat., 66°56.43' W. long. (G "1" Whistle, West Quoddy Head)  
 44°47.36' N. lat., 66°59.25' W. long. (R N "2", Morton Ledge)  
 44°45.51' N. lat., 67°02.87' W. long. (R "28M" Whistle, Baileys Mistake)  
 44°37.70' N. lat., 67°09.75' W. long. (Obstruction, Southeast of Cutler)  
 44°27.77' N. lat., 67°32.86' W. long. (Freeman Rock, East of Great Wass Island)  
 44°25.74' N. lat., 67°38.39' W. long. (R "2SR" Bell, Seahorse Rock, West of Great Wass Island)  
 44°21.66' N. lat., 67°51.78' W. long. (R N "2", Petit Manan Island)  
 44°19.08' N. lat., 68°02.05' W. long. (R "2S" Bell, Schoodic Island)  
 44°13.55' N. lat., 68°10.71' W. long. (R "8BI" Whistle, Baker Island)  
 44°08.36' N. lat., 68°14.75' W. long. (Southern Point, Great Duck Island)  
 43°59.36' N. lat., 68°37.95' W. long. (R "2" Bell, Roaring Bull Ledge, Isle Au Haut)  
 43°59.83' N. lat., 68°50.06' W. long. (R "2A" Bell, Old Horse Ledge)  
 43°56.72' N. lat., 69°04.89' W. long. (G "5TB" Bell, Two Bush Channel)  
 43°50.28' N. lat., 69°18.86' W. long. (R "2 OM" Whistle, Old Man Ledge)  
 43°48.96' N. lat., 69°31.15' W. long. (GR C "PL", Pemaquid Ledge)  
 43°43.64' N. lat., 69°37.58' W. long. (R "2BR" Bell, Bantam Rock)  
 43°41.44' N. lat., 69°45.27' W. long. (R "20ML" Bell, Mile Ledge)  
 43°36.04' N. lat., 70°03.98' W. long. (RG N "BS", Bulwark Shoal)  
 43°31.94' N. lat., 70°08.68' W. long. (G "1", East Hue and Cry)

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43°27.63' N. lat., 70°17.48' W. long. (RW "WI" Whistle, Wood Island)  
 43°20.23' N. lat., 70°23.64' W. long. (RW "CP" Whistle, Cape Porpoise)  
 43°04.06' N. lat., 70°36.70' W. long. (R N "2MR", Murray Rock)  
 43°02.93' N. lat., 70°41.47' W. long. (R "2KR" Whistle, Kittery Point)  
 43°02.55' N. lat., 70°43.33' W. long. (Odiornes Pt., Portsmouth, New Hampshire)

### New Hampshire

A line from 42°53.691' N. lat., 70°48.516' W. long. to 42°53.516' N. lat., 70°48.748' W. long. (Hampton Harbor)  
 A line from 42°59.986' N. lat., 70°44.654' W. long. to 42°59.956' N., 70°44.737' W. long. (Rye Harbor)

### Rhode Island

A line from 41°22.441' N. lat., 71°30.781' W. long. to 41°22.447' N. lat., 71°30.893' W. long. (Pt. Judith Pond Inlet)  
 A line from 41°21.310' N. lat., 71°38.300' W. long. to 41°21.300' N. lat., 71°38.330' W. long. (Ninigret Pond Inlet)  
 A line from 41°19.875' N. lat., 71°43.061' W. long. to 41°19.879' N. lat., 71°43.115' W. long. (Quonochontaug Pond Inlet)  
 A line from 41°19.660' N. lat., 71°45.750' W. long. to 41°19.660' N. lat., 71°45.780' W. long. (Weekapaug Pond Inlet)

### New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

### South Carolina

A line from 32°34.717' N. lat., 80°08.565' W. long. to 32°34.686' N. lat., 80°08.642' W. long. (Captain Sams Inlet)

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches - Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canav-

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eral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940)).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460 (Cape Canaveral to Key West, 1:466,940)).

(b) *Gear marking requirements.* (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Area, and Southeast U.S. Monitoring Area.

(i) *Requirements for Shark Gillnet Gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters—(A) Color code.* Shark gillnet gear (i.e., gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with the appropriate color code to designate gear types and areas as follows:

(1) *Gear type code.* Shark gillnet gear must be marked with a green marking.

(2) *Area code.* Shark gillnet gear set in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area,

and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i)(C) and (D) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface) and midway along the length of the buoy line.

(D) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m), unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(ii) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(iii) of this section, unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(A) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(1) Trap/pot gear in the Northern Inshore State Trap/Pot Waters Area, the Cape Cod Bay Restricted Area, the Stellwagen Bank/Jeffreys Ledge Restricted Area, the Great South Channel Restricted Trap/Pot Area where it overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(2) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(3) Trap/pot gear in the Great South Channel Restricted Trap/Pot Area where it overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Offshore Trap/Pot Waters Area must be marked with a black marking.

(4) Anchored and drift gillnet gear in the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and Other Northeast Gillnet Waters Area must be marked with a green marking.

(5) Anchored and drift gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(6) Gillnet gear (except gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

(B) *Markings.* All specified gear in specified areas must be marked with one color code described in paragraph (b)(2)(ii)(A) of this section (which indicates the gear type and general area where the gear is set). Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long and be placed midway on the buoy line in the water column. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code,

the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iii) *Requirements for all specified areas*—(A) *Surface buoy markings*. Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available upon request from the Regional Administrator, NMFS, Northeast Region upon request.

(3) *Changes to requirements*. If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (i) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements*. In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(9) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here.<sup>1</sup> The Assistant Administrator may revise these re-

quirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface*. No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) *No wet storage of gear*. Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area*. The Cape Cod Bay restricted area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Area-specific gear or vessel requirements during the winter restricted period*. No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the winter restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Winter restricted period*. The winter restricted period for the Cape Cod Bay Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (i) of this section.

(B) *Buoy line weak links*. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and

<sup>1</sup>Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

that meets the following specifications:

(1) The breaking strength of the weak links must not exceed 500 lb (226.8 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.

(B) *Gear and vessel requirements—(1) State-water portion.* No person or vessel may fish with or possess trap/pot gear in the state-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Federal-water portion.* No person or vessel may fish with or possess trap/pot gear in the Federal-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Trap/Pot Area—(i) Area.* The Great South Channel Restricted Trap/Pot Area consists of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period.* The spring restricted period for the Great South Channel Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the spring restricted period, no person or vessel may fish with, set, or possess trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with

those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* The other restricted period for the Great South Channel Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the other restricted period, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the requirements listed for Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); the requirements listed for Offshore Trap/Pot Waters Area in paragraph (c)(5) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge

Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area specified in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Offshore Trap/Pot<sup>2</sup> Waters Area—(i) Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area ⅓ Overlap and Area ⅔ Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area), and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°30' N. lat. south to 27°51' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface

<sup>2</sup>Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines*. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and

these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements*. From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements*. From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area*. The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies

with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted for this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(C) [Reserved]

(7) *Northern Nearshore Trap/Pot Waters Area—(i) Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery

regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.



(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(C) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(D) [Reserved]

(8) *Southern Nearshore<sup>3</sup> Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30' N lat. south to 27°51' N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed here, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline

woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is

<sup>3</sup>Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(9) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from the U.S./Canada bor-

der south to a straight line from 41° 18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish

with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs

(c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(d) *Restrictions applicable to anchored gillnet gear—(1) Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here.<sup>4</sup> The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions

<sup>4</sup>Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period—(A) Spring restricted period.* The

spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the spring restricted period, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Great South Channel Sliver Restricted Area—(i) Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel

may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and ex-

empted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be

knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations:

(1) *Configuration 1.* (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(iv) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(v) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(2) *Configuration 2.* (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed between the floatline tie loops between net panels; and

(iv) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(v) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(vi) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraphs (d)(6)(ii)(A) through (d)(6)(ii)(D) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may

revise these requirements in accordance with paragraph (i) of this section.

(7) *Mid/South Atlantic Gillnet Waters*—

(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by

NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead

weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(7)(ii)(C)(1) and (d)(7)(ii)(C)(2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted*

*Area—(i) Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area during the other restricted period unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by



that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure*. During the spring restricted period, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements*. During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies

with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15'

N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet

gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §§ 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters Area consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters

Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. During that time, no person may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(7) [Reserved]

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area*. The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north, unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section:

Point	N. lat.	W. long.
SERA1 .....	27°51'	(1)
SERA2 .....	27°51'	80°00'
SERA3 .....	32°00'	80°00'
SERA4 .....	32°36'	78°52'
SERA5 .....	32°51'	78°36'
SERA6 .....	33°15'	78°24'
SERA7 .....	33°27'	78°04'
SERA8 .....	(2)	78°33.9'

<sup>1</sup> Florida shoreline.

<sup>2</sup> South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N*. The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S*. The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions*—(i) *Restricted periods*. The restricted period for the Southeast U.S. Restricted Area N is from November 15

through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i) of this section.

(ii) *Closure for gillnets*. (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery*. Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at

any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4 <sup>7</sup>/<sub>8</sub> inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid-South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) [Reserved]

(g) *Restrictions applicable to the Other Southeast Gillnet Waters Area—(1) Area.* The Other Southeast Gillnet Waters Area consists of the area from 32°00' N. lat. (near Savannah, GA) south to 27°51' N. lat. for the Southeast Atlantic gillnet fishery, and from 32°00' N. lat. south to 26°46.50' N. lat. (near West Palm Beach, FL) for the Southeastern U.S. Atlantic shark gillnet fishery, and extending from 80°00' W. long. east to the eastern edge of the EEZ, for both the Southeast Atlantic gillnet and Southeastern U.S. Atlantic gillnet fisheries unless the Assistant Administrator changes this area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. (near New Smyrna Beach, FL) from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the set restrictions listed

below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Set restrictions.* All gillnets must comply with the following set restrictions:

(A) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(B) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00' N. lat. from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) [Reserved]

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N. lat. (near Sebastian Inlet, FL) south to 26°46.50' N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W. long., unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area from December 1 through March 31 unless that gear complies with the gear marking requirements specified in

paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2, and the person or vessel satisfies the vessel monitoring system and observer requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(ii) *At-sea observer coverage.* When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(iii) [Reserved]

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year,

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unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the FEDERAL REGISTER if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) *Seasonal Area Management (SAM) Program.* Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in § 229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of

this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(i) *SAM West—(A) Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. lat.	W. long
1W .....	42°30'	70°30'
2W .....	42°30'	69°24'
3W .....	41°48.9'	69°24'
4W .....	41°40'	69°45'
5W .....	41°40'	69°57'
and along the eastern shoreline of Cape Cod to		
6W .....	42°04.8'	70°10'
7W .....	42°12'	70°15'
8W .....	42°12'	70°30'

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in § 229.2.

(i) *Anchored gillnet gear—(i) Groundlines.* All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc.,

must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible that has a maximum breaking strength of 1,100 lb (499.0 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(v) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Trap/pot gear—(i) Groundlines.* All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters Areas, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2 and Outer Cape LMA only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 600 lb (272.2 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Offshore Trap/Pot Waters Area and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2/3 Overlap and LMA 3 only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of

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the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(ii) *SAM East—(A) Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

### SAM EAST

Point	N. Lat.	W. Long.
1E .....	42°30'	69°45'
2E .....	42°30'	67°27'
3E .....	42°09'	67°08.4'
4E .....	41°00'	69°05'
5E .....	41°40'	69°45'

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from May 1 through July 31, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM East unless that gear complies with the gear modifications found in paragraphs (i)(3)(i)(B)(I) and (i)(3)(i)(B)(2) of this section, or unless the gear is stowed as specified in § 229.2.

[72 FR 57181, Oct. 5, 2007, as amended at 73 FR 51241, Oct. 2, 2008]

## § 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.

(a) *Restrictions—(1) Northeast Closure Area—(i) Area restrictions.* From August 15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Northeast Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

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### NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1 .....	44°27.3' .....	68°55.0' (ME shoreline)
NE2 .....	43°29.6' .....	68°55.0'
NE3 .....	44°04.4' .....	67°48.7'
NE4 .....	44°06.9' .....	67°52.8'
NE5 .....	44°31.2' .....	67°02.7'
NE6 .....	44°45.8' .....	67°02.7' (ME shoreline)

(2) *Mid-Coast Management Area—(i) Area restrictions.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

### MID-COAST MANAGEMENT AREA

Point	N. Lat.	W. Long.
MC1 .....	42°30.0' .....	70°50.1' (MA shoreline)
MC2 .....	42°30.0' .....	70°15.0'
MC3 .....	42°40.0' .....	70°15.0'
MC4 .....	42°40.0' .....	70°00.0'
MC5 .....	43°00.0' .....	70°00.0'
MC6 .....	43°00.0' .....	69°30.0'
MC7 .....	43°30.0' .....	69°30.0'
MC8 .....	43°30.0' .....	69°00.0'
MC9 .....	44°17.8' .....	69°00.0' (ME shoreline)

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the western portion of the Mid-Coast Management Area (west of 70°15' W. long.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas combined exceeds the target harbor



porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(3) *Massachusetts Bay Management Area*—(i) *Area restrictions*. From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area. These restrictions do not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

## MASSACHUSETTS BAY MANAGEMENT AREA

Point	N. Lat.	W. Long.
MB1 .....	42°30.0' .....	70°50.1' (MA shoreline)
MB2 .....	42°30.0' .....	70°30.0' .....
MB3 .....	42°15.0' .....	70°30.0' .....
MB4 .....	42°15.0' .....	70°00.0' .....
MB5 .....	42°00.0' .....	70°00.0' .....
MB6 .....	42°00.0' .....	70°01.2' (MA shoreline)
MB7 .....	42°00.0' .....	70°04.8' (MA shoreline)
MB8 .....	42°00.0' .....	70°42.2' (MA shoreline)

(iii) *Closing procedures*. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close a portion of the Massachusetts Bay Management Area (north of 42°15' N. lat.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Massachusetts Bay, Mid-Coast, and Stellwagen Bank Management Areas combined exceeds the target harbor

porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(4) *Stellwagen Bank Management Area*—(i) *Area restrictions*. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

## STELLWAGEN BANK MANAGEMENT AREA

Point	N. Lat.	W. Long.
SB1 .....	42°30.0' .....	70°30.0' .....
SB2 .....	42°30.0' .....	70°15.0' .....
SB3 .....	42°15.0' .....	70°15.0' .....
SB4 .....	42°15.0' .....	70°30.0' .....
SB1 .....	42°30.0' .....	70°30.0' .....

(iii) *Closing procedures*. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Stellwagen Bank Management Area from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(5) *Southern New England Management Area*—(i) *Area restrictions*. From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing

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with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

### SOUTHERN NEW ENGLAND MANAGEMENT AREA

Point	N. Lat.	W. Long.
SNE1 .....	Western boundary as specified <sup>1</sup> .	
SNE2 .....	40°00.0' .....	72°30.0'
SNE3 .....	40°00.0' .....	69°30.0'
SNE4 .....	42°15.0' .....	69°30.0'
SNE5 .....	42°15.0' .....	70°00.0'
SNE6 .....	41°58.3' .....	70°00.0' (MA shoreline)

<sup>1</sup> Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30.0' W. long.

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close two areas (Cape Cod South Expansion Closure Area and Eastern Cape Cod Closure Area) within the Southern New England Management Area from February 1 through April 30 annually if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Southern New England Management Area exceeds the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings.

(6) *Cape Cod South Closure Area*—(i) *Area restrictions.* From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Closure Area. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cape Cod South Closure Area is bounded by straight lines connecting the following points in the order stated:

### CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1 .....	41°19.6' .....	71°45.0' (RI shoreline)
CCS2 .....	40°40.0' .....	71°45.0'

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### CAPE COD SOUTH CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
CCS3 .....	40°40.0' .....	70°30.0'
CCS4 .....	41°20.9' .....	70°30.0'
CCS5 .....	41°23.1' .....	70°30.0'
CCS6 .....	41°33.1' .....	70°30.0' (MA shoreline)

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close the Cape Cod South Closure Area and an area to its south (Cape Cod South Expansion Closure Area) from February 1 through April 30 annually if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Southern New England Management Area exceeds the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings.

(7) *Offshore Management Area*—(i) *Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in §648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

### OFFSHORE MANAGEMENT AREA

Point	N. Lat.	W. Long.
OFS1 .....	42°50.0' .....	69°30.0'
OFS2 .....	43°10.0' .....	69°10.0'
OFS3 .....	43°10.0' .....	67°40.0'
OFS4 .....	43°05.8' .....	67°40.0' (EEZ boundary)
OFS5 .....	42°53.1' .....	67°44.5' (EEZ boundary)
OFS6 .....	42°47.3' .....	67°40.0' (EEZ boundary)
OFS7 .....	42°10.0' .....	67°40.0'
OFS8 .....	42°10.0' .....	69°30.0'
OFS1 .....	42°50.0' .....	69°30.0'

(8) *Cashes Ledge Closure Area*—(i) *Area restrictions.* During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel

unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1 .....	42°30.0' .....	69°00.0' .....
CL2 .....	42°30.0' .....	68°30.0' .....
CL3 .....	43°00.0' .....	68°30.0' .....
CL4 .....	43°00.0' .....	69°00.0' .....
CL1 .....	42°30.0' .....	69°00.0' .....

(b) *Pingers*—(1) *Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) *Pinger training and authorization.* The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) *Annual review for consequence area actions*—(1) *Coastal Gulf of Maine Closure Area*—(i) *Establishment.* If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas exceeds the target

bycatch rate of 0.031 harbor porpoises per metric tons of landings, the Coastal Gulf of Maine Closure Area shall be established.

(ii) *Restrictions.* From October 1 through November 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Coastal Gulf of Maine Closure Area. This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When the area is open to fishing, the requirements of the Mid-Coast (as described in paragraph (a)(2) of this section), Massachusetts Bay (as described in paragraph (a)(3) of this section), and Stellwagen Bank (as described in paragraph (a)(4) of this section) Management Areas will remain in effect.

(iii) *Area boundaries.* The Coastal Gulf of Maine Closure Area is bounded by straight lines connecting the following points in the order stated:

COASTAL GULF OF MAINE CLOSURE AREA

Point	N. Lat.	W. Long.
CGM1 .....	43°33.0' .....	70°15.0' (ME shore-line)
CGM2 .....	42°15.0' .....	70°15.0' .....
CGM3 .....	42°15.0' .....	70°46.0' (MA shore-line)

(2) *Cape Cod South Expansion and Eastern Cape Cod Closure Areas*—(i) *Establishment.* If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Southern New England Management Area exceeds the target bycatch rate of 0.023 harbor porpoises per metric tons of landings, the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area shall be established.

(ii) *Restrictions.* From February 1 through April 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area.

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This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When the areas are open to fishing, the requirements of the Southern New England Management Area, as described in paragraph (a)(5) of this section, will remain in effect.

(iii) *Area boundaries.* (A) The Cape Cod South Expansion Closure Area is bounded by straight lines connecting the following points in the order stated:

### CAPE COD SOUTH EXPANSION CLOSURE AREA

Point	N. Lat.	W. Long.
CCSE1 .....	41°19.6' .....	71°45.0' (RI shoreline)
CCSE2 .....	40°00.0' .....	71°45.0'
CCSE3 .....	40°00.0' .....	70°00.0'
CCSE4 .....	40°30.0' .....	70°00.0'
CCSE5 .....	40°30.0' .....	70°30.0'
CCSE6 .....	41°20.9' .....	70°30.0'
CCSE7 .....	41°23.1' .....	70°30.0'
CCSE8 .....	41°33.1' .....	70°30.0' (MA shoreline)

(B) The Eastern Cape Cod Closure Area is bounded by straight lines connecting the following points in the order stated:

### EASTERN CAPE COD CLOSURE AREA

Point	N. Lat.	W. Long.
ECC1 .....	41°58.3' .....	70°00.0' (MA shoreline)
ECC2 .....	42°15.0' .....	70°00.0'
ECC3 .....	42°15.0' .....	69°30.0'
ECC4 .....	41°40.0' .....	69°30.0'
ECC5 .....	41°40.0' .....	69°56.8' (MA shoreline)

(3) *Notification.* Upon determining that establishing a consequence closure area as described in paragraphs (d)(1) and (d)(2) of this section is necessary, NMFS will notify, in advance of the closure, the Harbor Porpoise Take Reduction Team and gillnet permit holders through mail notification. NMFS will also publish notification in the FEDERAL REGISTER and post information on the Harbor Porpoise Take Reduction Plan Web site related to the establishment of the closure area(s).

(4) If any or all of the closure areas discussed in paragraphs (d)(1) and (d)(2) are implemented, NMFS will monitor harbor porpoise bycatch rates throughout the New England region. The provisions set forth in paragraphs (d)(1) and

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(d)(2) shall remain in effect each year after implementation until bycatch levels approach a zero mortality and serious injury rate (ZMRG), or until NMFS, in collaboration with the Harbor Porpoise Take Reduction Team, develops and implements new measures.

(e) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS's existing permit application process, administered by NMFS.

(f) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if:

(1) NMFS determines that pinger operating effectiveness in the commercial gillnet fishery is inadequate to reduce bycatch below the stock's PBR level; or

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[75 FR 7396, Feb. 19, 2010]

## § 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. long. at the southern coast of Long Island, NY at 40°50.1' N. lat. and on the south by the NC/SC border (33°51.1' N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations within this section are not applicable to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

New York

40°45.70' N., 72°45.15' W. to 40°45.72' N.,

72°45.30' W. (Moriches Bay Inlet)

40°37.32' N., 73°18.40' W. to 40°38.00' N.,

73°18.56' W. (Fire Island Inlet)

40°34.40' N., 73°34.55' W. to 40°35.08' N.,

73°35.22' W. (Jones Inlet)

New Jersey/Delaware

39°45.90' N., 74°05.90' W. to 39°45.15' N.,  
74°06.20' W. (Barnegat Inlet)  
39°30.70' N., 74°16.70' W. to 39°26.30' N.,  
74°19.75' W. (Beach Haven to Brigantine Inlet)  
38°56.20' N., 74°51.70' W. to 38°56.20' N.,  
74°51.90' W. (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

#### Maryland/Virginia

38°19.48' N., 75°05.10' W. to 38°19.35' N.,  
75°05.25' W. (Ocean City Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)

37°11.10' N., 75°49.30' W. to 37°10.65' N.,  
75°49.60' W. (Little Inlet)  
37°07.00' N., 75°53.75' W. to 37°05.30' N.,  
75°56.1' W. (Smith Island Inlet)

#### North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Restrictions*—(1) *Waters off New Jersey Management Area*. The Waters off New Jersey Management Area is bounded by straight lines connecting the following points in the order stated:

#### WATERS OFF NEW JERSEY MANAGEMENT AREA

Point	N. Lat.	W. Long.
WNJ1 .....	40°50.1' .....	72°30.0' (NY shoreline)
WNJ2 .....	38°47.0' .....	72°30.0' .....
WNJ3 .....	38°47.0' .....	75°05.0' (DE shoreline)

(i) *Closure*. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with

§ 229.2, or fail to remove any large mesh gillnet gear from the Waters off New Jersey Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear*. From January 1 through April 30, except during April 1 through April 20, as described in paragraph (b)(1)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Waters off New Jersey Management Area, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is not more than 4,800 ft (1,463.0 m).

(B) *Twine size*. The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets*. Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets*. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel, or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string*. The total number of nets or net panels in a net string does not exceed 16.

(F) *Tie-down system*. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear*. From January 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove

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any small mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(2) *Mudhole North Management Area.* The Mudhole North Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE NORTH MANAGEMENT AREA		
Point	N. Lat.	W. Long.
MN1 .....	40°28.1' .....	74°00.0' (NJ shoreline)
MN2 .....	40°30.0' .....	74°00.0'
MN3 .....	40°30.0' .....	73°20.0'
MN4 .....	40°05.0' .....	73°20.0'
MN5 .....	40°05.0' .....	74°02.0' (NJ shoreline)

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear from the Mudhole North Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set,

haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 and April 1 through April 20 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(2)(i) of this section, no person may fish with, set,

haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(3) *Mudhole South Management Area.* The Mudhole South Management Area is bounded by straight lines connecting the following points in the order stated:

#### MUDHOLE SOUTH MANAGEMENT AREA

Point	N. Lat.	W. Long.
MS1 .....	40°05.0' .....	73°31.0' .....
MS2 .....	40°05.0' .....	73°00.0' .....
MS3 .....	39°51.0' .....	73°00.0' .....
MS4 .....	39°51.0' .....	73°31.0' .....
MS1 .....	40°05.0' .....	73°31.0' .....

(i) *Closures.* From February 1 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole South Management Area. In addition, from April 1 through April 20, it is pro-

hibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole South Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 1 through March 15 and April 1 through April 20 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole South Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30 of each year, except during February 1 through March 15 as described in paragraph (b)(3)(i) of this section, no person may

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fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any small mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole South Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(iii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(4) *Southern Mid-Atlantic Management Area.* The Southern Mid-Atlantic Management Area is bounded by straight lines connecting the following points in the order stated:

SOUTHERN MID-ATLANTIC MANAGEMENT AREA

Point	N. Lat.	W. Long.
SMA1 .....	38°47.0' .....	75°05.0' (DE shore-line)
SMA2 .....	38°47.0' .....	72°30.0'
SMA3 .....	33°51.1' .....	72°30.0'
SMA4 .....	33°51.1' .....	78°32.5' (NC/SC border)

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear from the Southern Mid-Atlantic Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From February 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(4)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(ii)(A) through (F) of this section, or is stowed in accordance with §229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m) in length.

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From February 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any small mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described



in paragraphs (b)(4)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is no longer than 2,118 ft (645.6 m).

(B) *Twine size*. The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets*. Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets*. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string*. The total number of nets or net panels in a net string does not exceed 7.

(F) *Tie-down system*. Tie-downs are prohibited.

(c) *Research permits*. An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process, administered by NMFS.

(d) *Other special measures*. The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications are not reducing bycatch to below the stock's PBR level.

[75 FR 7399, Feb. 19, 2010]

#### § 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope*. The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock in specific Category I and Cat-

egory II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) *Definitions*. In addition to the definitions contained in the Act, § 216.3 and § 229.2 of this chapter, the terms defined in this section shall have the following definitions, even if a contrary definition exists in the Act, § 216.3, or § 229.2:

*Beach* means landward of and including the mean low water line.

*Beach/water interface* means the mean low water line.

*Large mesh gillnet* means a gillnet constructed with a mesh size greater than or equal to 7-inches (17.8 cm) stretched mesh.

*Medium mesh gillnet* means a gillnet constructed with a mesh size of greater than 5-inches (12.7 cm) to less than 7-inches (17.8 cm) stretched mesh.

*New Jersey, Delaware, and Maryland State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 40° 30' N. (New York/New Jersey border at the coast) and on the south by 38° 01.6' N. (Maryland/Virginia border at the coast).

*Night* means any time between one hour after sunset and one hour prior to sunrise.

*Northern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 36° 33' N. (Virginia/North Carolina border at the coast) and on the south by 34° 35.4' N. (Cape Lookout, North Carolina).

*Northern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 38° 01.6' N. (Virginia/Maryland border at the coast) and on the south by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth).

*Small mesh gillnet* means a gillnet constructed with a mesh size of less than or equal to 5-inches (12.7 cm) stretched mesh.

*South Carolina, Georgia, and Florida waters* means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33° 52' N. (North Carolina/South Carolina border at the coast) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

*Southern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34° 35.4' N. (Cape Lookout, North Carolina) and on the south by 33° 52' N. (North Carolina/South Carolina border at the coast).

*Southern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth) and on the south by 36° 33' N. (Virginia/North Carolina border at the coast).

(c) *Regulated waters.* The regulations in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52' N. 75° 24.30' W. to 37° 11.90' N. 75° 48.30' W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or

noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(d) *Regional management measures*—(1) *New Jersey, Delaware, and Maryland State waters*—(i) *Medium and large mesh.* From June 1 through October 31, in New Jersey, Delaware, and Maryland State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(2) *Virginia state waters*—(i) *Medium and large mesh.* From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(3) *Southern Virginia State waters*—(i) *Large mesh gillnets.* From November 1 through December 31, in Southern Virginia State waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(ii) [Reserved]

(4) *Northern North Carolina State waters*—(i) *Small mesh gillnets.* From May 1 through October 31, in Northern North Carolina State waters, no person may fish with any small mesh gillnet gear longer than 1,000 feet (304.8 m).

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(iii) *Large mesh gillnets.* (A) From April 15 through December 15, in Northern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Northern North Carolina State waters, no person may fish with any large mesh gillnet without tie-downs at night.

(5) *Southern North Carolina State waters*—(i) *Medium Mesh Gillnets*. From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(ii) *Large mesh gillnets*. (A) From April 15 through December 15, in Southern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Southern North Carolina State waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

(6) *South Carolina, Georgia, and Florida waters*—(i) *Gillnets*. Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(ii) [Reserved]

[71 FR 24796, Apr. 26, 2006, as amended at 73 FR 77533, Dec. 19, 2008]

#### § 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope*. The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of long-finned and short-finned pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery off the U.S. east coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

(1) *Persons subject to this section*. The regulations in this section apply to the owner and operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 of this title and that has pelagic longline gear onboard as described under § 635.21(c) of this title.

(2) *Geographic scope*. The geographic scope of the PLTRP is the Atlantic Federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (d) of this section apply throughout the Atlantic Federal EEZ off the U.S. East Coast. The regulation specified in paragraph (e) of this section applies to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) *Definitions*. In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) *Cape Hatteras Special Research Area (CHSRA)* means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long.

(2) *Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

(3) *Observer* means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) *Pelagic longline* has the same meaning as in § 635.2 of this title.

(c) *Marine Mammal Handling and Release Placard*. The placard, "Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear," must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824-5312 to request additional copies of the placard.

(d) *CHSRA*—(1) *Special observer requirements*. If you deploy or fish with pelagic longline gear in the CHSRA, or intend to do so, you must call NMFS Southeast Fisheries Science Center (SEFSC), 1-888-254-2558, at least 48 hours, but no more than 96 hours, prior to embarking on your fishing trip. This

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requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If, upon calling in, you are informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then you need not wait until your stated date and time of departure and may depart on your fishing trip immediately. If you are assigned an observer, you must take the observer during that fishing trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. You must comply with all provisions of § 229.7, Monitoring of incidental mortalities and serious injuries. In addition, all provisions of 50 CFR 600.746, Observers, apply. No waivers will be granted under § 229.7(c)(3) or § 600.746(f). A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from deploying or fishing with pelagic longline gear in the CHSRA.

(2) *Special research requirements.* In addition to observing normal fishing activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per

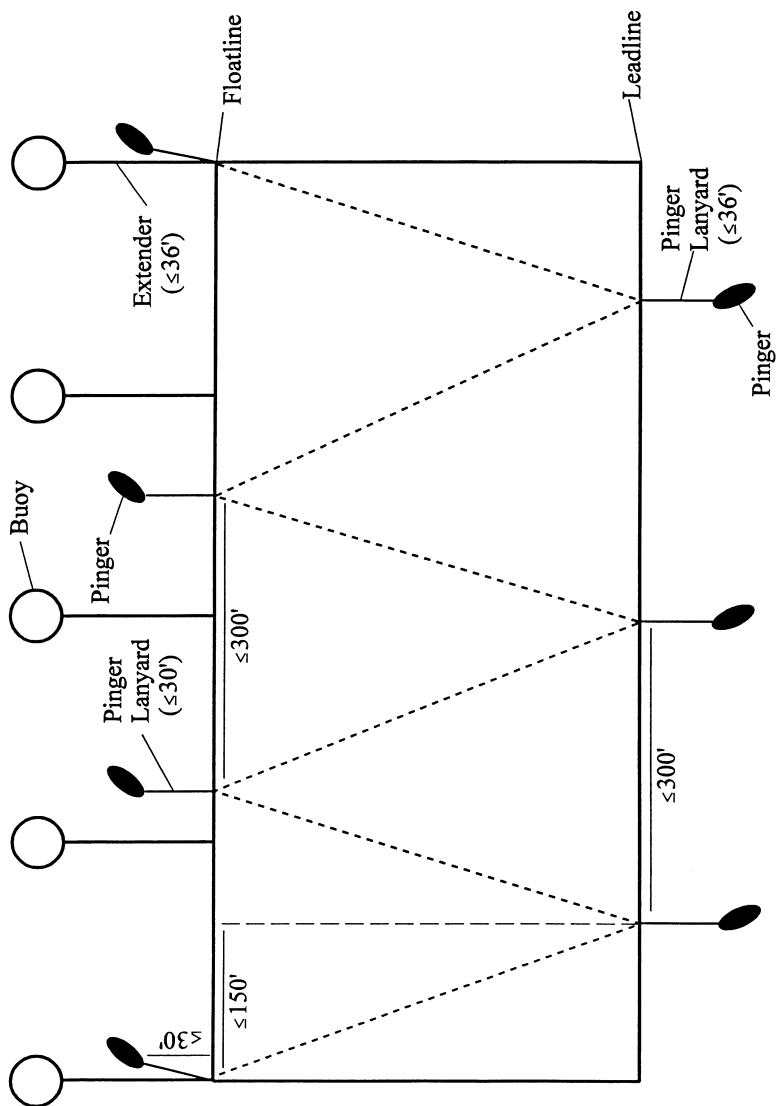
§ 229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in § 229.36(d)(1) and § 229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[74 FR 23358, May 19, 2009]

Figure 1. Drift Gillnet Pinger Configuration and Extender Requirements



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